



**NOTICE OF *EX PARTE*  
PRESENTATION**

March 3, 2005

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW B204  
Washington, DC 20554

**Re: *I/M/O National Association of State Utility Consumer Advocates’  
Petition for Declaratory Ruling Regarding Truth-in-Billing and  
Billing Format*, CG Docket No. 04-208**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission’s Rules, 47 C.F.R. § 1.206(b), notice is being provided that on Wednesday, March 2, 2005, the following representatives of the National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> met with Barry Ohlson and Scott Bergmann, legal advisors to Commissioner Jonathan S. Adelstein: Kathleen F. O’Reilly – NASUCA; and Patrick W. Pearlman – Deputy Consumer Advocate, West Virginia Public Service Commission/NASUCA (by telephone).

In addition, NASUCA representatives attending NASUCA’s March 1, 2005 mid-winter meeting with Commission staff discussed issues related to NASUCA’s petition and other papers filed in this proceeding with Jay C. Keithley, Deputy Bureau Chief of the Consumer and Government Affairs Bureau. Among other

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<sup>1</sup> NASUCA is an association of 43 consumer advocates in 41 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See e.g., Ohio Rev. Code* Ch. 4911; *W. Va. Code* § 24-1-1(f)(2).

things, NASUCA representatives expressed concern regarding industry comments urging the Commission to preempt, in whole or part, state commissions' ability to regulate wireless carriers' billing practices, including wireless carriers' inclusion of so-called "regulatory" line items on customers' monthly phone bills. Finally, the following NASUCA representatives met with Jessica Rosenworcel, legal advisor to Commissioner Michael J. Copps, on March 1, 2005, to express concern regarding industry's preemption arguments and the need for greater, not lesser, consumer protection at both the federal and state levels: Kathleen F. O'Reilly – NASUCA; Regina Costa – Toward Utility Reform Network/NASUCA. Patrick W. Pearlman, Deputy Consumer Advocate, West Virginia Public Service Commission/NASUCA, had contacted Ms. Rosenworcel by telephone on February 28, 2005 to express similar concerns.

The purpose of the March 2, 2005 meeting with Commissioner Adelstein's staff was to discuss issues raised in connection with NASUCA's petition for a declaratory ruling in the above-captioned proceeding. In particular, the discussion focused on NASUCA's view of any action by the Commission to preempt states from regulating wireless carriers' use of so-called "regulatory" line items, as well as action to extend some of the Commission's "Truth-in-Billing" guidelines to wireless carriers. Commissioner Adelstein's staff also inquired about the evidence in the record supporting NASUCA's claims that consumers are actually harmed by the carriers billing practices in issue.

NASUCA made it clear that it opposes any effort by the Commission that would shift the focus of this proceeding from the issue of whether the current consumer protection provisions contained in the "Truth-in-Billing" order adequately protect consumers from confusing, misleading and deceptive carrier billing practices, to an effort to restrict or even eliminate state authority to regulate carriers' billing practices pursuant to the authority reserved to them under 47 U.S.C. § 332(c)(3). The Commission would be making a grave error – from a procedural, legal and policy perspective – were it to preempt state commissions from regulating wireless, or even wireline, carriers' billing practices, including the pervasive use of "regulatory" line items. Such action would amount to nothing less than a hijacking of NASUCA's effort to apply the pro-consumer goals embodied in the "Truth-in-Billing" order to the billing practices in question, in order to protect the telecommunications industry from state consumer protection efforts.

As NASUCA's representatives made clear, there was nothing in its petition to suggest that states may be preempted from regulating the carrier billing practices described in its March 30, 2004 petition. NASUCA's petition sought only to clarify that the Commission's "Truth-in-Billing" order, and subsequent Commission orders, did not permit the line item charges in question. Certainly state commissions would not have anticipated that preemption of their authority by the Commission was a possible outcome of the Commission's ruling on NASUCA's petition. Moreover, preemption by the Commission would violate Congress' explicit

reservation of state authority to regulate wireless carriers' billing practices and to enact and enforce laws that protect consumers generally. Likewise, nothing in NASUCA's pleadings would have suggested that states ought to be preempted from regulating wireline long distance companies' billing practices, to the extent those practices involve the carriers' intrastate service. NASUCA is unaware of this latter issue being raised even in the comments of the carriers opposed to its petition.

With regard to the evidence in the record supporting NASUCA's claims that consumers are hurt by the carriers' use of "regulatory" line items, NASUCA's representatives pointed to the hundreds of comments filed electronically with the Commission by ordinary consumers, from all around the country, expressing the frustration, confusion and harm they have experienced from confusing, misleading and deceptive billing practices. Many of these comments were filed with the Commission in the wake of media stories regarding NASUCA's petition that actually provided details regarding the on-going docket. Further, a number of commenters supporting NASUCA's petition cited consumer surveys noting the high level of customer dissatisfaction with telecommunications service, in general, and wireless service in particular.<sup>2</sup> Carriers' fees and billing practices were a substantial component of the overall angst expressed by consumers. In addition, NASUCA's representatives cited an economics study provided by AARP in its reply comments that explained why producers in competitive markets have an economic incentive have to create confusion among consumers regarding the price of the producers' goods and services.<sup>3</sup> Moreover, studies and surveys conducted after the filing of NASUCA's petition reinforce the evidence in the record that demonstrates that carriers' billing practices, specifically the use of confusing and deceptive line items, is harming consumers.<sup>4</sup> The Commission should consider these reports in rendering its decision.

With respect to the Commissioner's staff's suggestions that extending certain "Truth-in-Billing" guidelines to the wireless industry might be an adequate *quid pro quo* for state preemption, NASUCA's representatives made it clear that this is a very tiny and most inadequate fig leaf indeed. As NASUCA's representatives pointed out, the "Truth-in-Billing" order's principle that carriers provide "full and non-misleading" descriptions of billed charges already applies to the wireless

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<sup>2</sup> See, e.g., *AARP Reply Comments*, CG Docket No. 04-208, pp. 2-3 (Aug. 12, 2004) (citations omitted).

<sup>3</sup> *Id.*, p. 3 fn. 11 (Aug. 12, 2004), citing Gabaix, Xavier & David Laibson, "Competition and Consumer Confusion," Harvard and MIT Manuscript (current draft: April 30, 2004), available at [http://econ-www.mit.edu/faculty/download\\_pdf.php?id=906](http://econ-www.mit.edu/faculty/download_pdf.php?id=906).

<sup>4</sup> See, e.g., Thirteenth Annual NACAA/CFA Consumer Complaint Survey Report, pp. 3-5 (Feb. 10, 2005), available at <http://www.consumerfed.org/NACAAComplaintreport.pdf>; "Can You Hear Us Now? A Report on How the Cell Phone Industry has Failed Consumers, Including a Cell Phone Shopper's Guide," Massachusetts Public Interest Research Group (March 2005), available at <http://pirg.org/alerts/route.asp?id2=16135>.

industry. Making a slightly more specific guideline implementing this principle applicable to wireless carriers does virtually nothing to enhance consumer protection. Moreover, all the guidelines implementing the “full and non-misleading charges” principle have applied to the wireline industry since 1999, yet carriers have been able to adopt misleading and deceptive “regulatory” surcharges regardless.

NASUCA representatives’ comments during all these meetings can be summed up as this: the Commission has before it a golden opportunity to do right by consumers, by curbing telecommunications carriers’ use of so-called “regulatory” line items designed to confuse consumers regarding the true cost of their telephone service and to stymie consumers’ ability to make rational economic choices among competing carriers. NASUCA representatives urged the Commission to disallow such charges unless they are actually mandated or authorized by government action, and then such charges should correspond to the amount authorized by government. NASUCA hopes that the Commission will not turn this opportunity into a nightmare for consumers and state regulators by reducing or eliminating consumer protections at the state level while doing virtually nothing to increase protection at the federal level.

Very truly yours,

/s/

Charles Acquard  
Executive Director, NASUCA

cc: Chairman Michael J. Powell  
Christopher Libertelli, Senior Legal Advisor  
Commissioner Kathleen Q. Abernathy  
Matthew Brill, Senior Legal Advisor  
Commissioner Michael J. Copps  
Jessica Rosenworcel, Competition and Universal Service Legal Advisor  
Commissioner Kevin J. Martin  
Daniel Gonzalez, Senior Legal Advisor  
Commissioner Jonathan S. Adelstein  
Scott Bergmann, Legal Advisor for Wireline Issues  
Jefferey Carlisle, Bureau Chief, Wireline Competition Bureau

